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TIMOTHY B. FLEMING  
OF COUNSEL

January 26, 2020

The Honorable George B. Daniels  
U.S. DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

**VIA ECF AND FEDERAL EXPRESS**

- Re:** *In Re Terrorist Attacks on September 11, 2001, 1:03-md-01570 (GBD)(SN)*  
*Havlish, et al. v. bin Laden, et al., 1:03-cv-09848 (GBD)(SN)*  
*Hoglan, et al. v. Islamic Republic of Iran, et al., 11 Civ. 7550 (GBD)(SN)*
- Re:** **REQUEST TO USE PREVIOUSLY-SEALED PORTIONS OF FACT WITNESS TESTIMONY AND EXHIBITS; EXPEDITED CONSIDERATION REQUESTED**

Dear Judge Daniels:

The *Havlish* Plaintiffs in the above-captioned MDL, by and through the undersigned counsel, hereby request this Honorable Court for permission to use previously-sealed evidence in certain cases in Europe regarding their efforts to collect their judgment damage awards. Specifically, the *Havlish* Plaintiffs seek permission for the limited purpose of using certain excerpts of previously-sealed testimony of two of the *Havlish* Iranian defector witnesses – Witnesses X and Z – in judgment domestication, enforcement, and collection litigation in Italy and Luxembourg. The purpose is to address issues that have recently arisen in judgment domestication and enforcement litigation that now warrant addressing in the Plaintiffs' *exequatur* petitions in those countries and in related judgment enforcement proceedings, including efforts to maintain a vital asset freeze order, and, ultimately, to obtain turnover of assets of one of the judgment defendants in this case, the Central Bank of Iran.

These issues have compelled European counsel representing the *Havlish* Plaintiffs in the Italy and Luxembourg proceedings to request, urgently and respectfully, that an order be entered by this Court no later than Tuesday, January 28, 2020. The evidence and this Court's order with apostille must be filed in those respective courts by Wednesday, January 29, 2020. Accordingly, we respectfully request the Court's expedited consideration of this letter motion. For the Court's consideration, a proposed form of order is filed herewith.

Hon. George B. Daniels  
UNITED STATES DISTRICT JUDGE  
January 26, 2020

*Page 2*

This evidence will be used confidentially in both the Italian and Luxembourg proceedings and will not be available to the general public. Only the litigants will be able to see the evidence.

The witness testimony would be submitted only in paper transcript format and all names will be redacted, *e.g.*, the names of all other persons present, such as the court reporter, video reporter, and interpreter. However, the names of Plaintiffs' counsel and *Havlish* investigator Kenneth Timmerman will not be redacted.

Nothing need be released or disturbed from this Court's vault. A true and correct copy of the transcript and exhibit materials in counsel's possession will be utilized to create the submissions to the Italian and Luxembourg courts.

This testimony and the documents to be provided to European counsel were submitted in *Havlish* (and also in *Hoglan, et al. v. Islamic Republic of Iran, et al.*), under seal, by the Plaintiffs and was considered by this Court, together with all the other evidence submitted in *Havlish* during its consideration of the evidence that led this Court, pursuant to 28 U.S.C. §1608(e), to issue its final Order and Judgment in *Havlish* on October 12, 2012, (entered onto the docket October 16, 2012, *Havlish* Docket No. 317) and, thereafter, its Order Permitting Attachment and Execution Pursuant to The Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §1610(c) (dated September 12, 2013; MDL Docket No. 2778).

On May 20, 2011 the *Havlish* Plaintiffs filed their Motion to Seal Portions of the Evidence in Support of their Motion for Entry of Judgment by Default Against Sovereign Defendants (*Havlish* Docket No. 277; MDL Docket No. 2434). Plaintiffs' Motion to Seal Portions of the Evidence sought the sealing of evidence provided by three Iranian defectors, identified by the pseudonyms "Witness X," "Witness Y," and "Witness Z." The basis for Plaintiffs' Motion to Seal Portions of the Evidence was that these three Iranian defector fact witnesses "have legitimate and serious concerns for their safety and the safety of their families and friends if their identities, as witnesses in this case, and/or information related to them, were to become publicly known; *i.e.*, known to the regime ruling the Islamic Republic of Iran." By Order dated July 5, 2011, this Court granted the *Havlish* Plaintiffs' Motion to Seal Portions of the Evidence (MDL Docket Document No. 2440).

The *Havlish* Plaintiffs now request permission to use certain portions of the Witnesses X and Y testimony transcripts, and a few documents used in connection therewith, together with the *Havlish* caption pages from their testimony, in Italian proceedings, and in Luxembourg proceedings, in connection with pending asset freeze orders and related matters. The specific transcript excerpts and exhibits that Plaintiffs seek to use in Italy and Luxembourg are as follows:

Hon. George B. Daniels  
UNITED STATES DISTRICT JUDGE  
January 26, 2020

*Page 3*

Witness X – Transcript dated March 2, 2008

*Page numbers are the transcript page numbers, not the pdf.*

Start page 1  
End Page 13, Line 18

Start Page 18, Line 5  
End Page 35, Line 5

Start Page 56, Line 15  
End Page 64, Line 8

Start Page 73, Line 1  
End Page 74, Line 12

Witness Z – Transcript dated June 3, 2005

*Page numbers are the transcript page numbers, not the pdf, and “@” refers to the time code, not the line.*

Start Page 1  
End Page 6 @ 9:27:04

Start page 26 @ 9:54:22  
End Page 32 @ 12:04:13

Start Page 44 @ 10:18:42  
End Page 48 @ 10:24:08

Start Page 61 @ 10:53:02  
End Page 76 @ 11:34:08

Start Page 78 @ 11:35:42  
End Page 91 @ 11:56:04

Start Page 108 @ 12:34:51  
End Page 118 @ 12:47:32

Hon. George B. Daniels  
UNITED STATES DISTRICT JUDGE  
January 26, 2020

*Page 4*

Start Page 128 @ 1:06:18  
End Page 139 @ 1:20:21

Start Page 149 @ 1:38:16  
End Page 155 @ 1:45:39

Start Page 167 @ 2:03:29  
End Page 169 @ 2:06:07

Documents

- Ex. 7 from Ex. S-7 (Witness Z testimony)
  - Ex. S-34 (English translation of same)
- Ex. 8 from Ex. S-7 (Witness Z testimony)
  - Ex. S-35 (English translation of same)
- Ex. 10 from Ex. S-7 (Witness Z testimony)
  - Ex. S-36 (English translation of same)

Witness X and Z remain in great jeopardy, are presently in dire straits, and the legitimate and serious concern for their safety has not abated. Accordingly, general unsealing would subject the witnesses, in the views of the witnesses themselves, *Havlish* counsel, and investigator Kenneth Timmerman, to grave risk, and their evidence, at this time, should remain sealed in this Court. Their identities will be redacted from the transcripts and exhibits to be submitted to the courts in Italy and Luxembourg.

This request does not seek permission to use any other sealed testimony or exhibits in any other proceedings at this time.

Thank you very much for your consideration of this letter motion and especially for the Court's expedited consideration. We apologize for the small amount of time in which we are requesting the Court's consideration of this matter. Please do not hesitate to contact the undersigned counsel if the Court requires any further information.

Respectfully Submitted,



Timothy B. Fleming

cc: European and American liaison counsel  
All counsel of record in the MDL via ECF